IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.(Main) No.580/2007

Date of Decision: 27th April, 2007

In the matter of:-

Om Prakash Nagpal .... Petitioner
Through: Mr.F.K.Jha, Advocate.

Versus

Sh.Prem Pal @ Prem Kumar & Anr .... Respondents
Through: Nemo.

CORAM:
HON'BLE MR.JUSTICE ANIL KUMAR

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not ? NO

3. Whether the judgment should be reported in the Digest ? NO

ANIL KUMAR, J. (ORAL)

1. The petitioner has impugned the order of Rent Control Tribunal dated 17th Jan, 2006 dismissing his appeal against the dismissal of his objection under Section 25B of Delhi Rent Control Act by the Rent Controller by his order dated 7th July, 2006 in Execution Petition No.33/2000 titled Sh.Prem Pal Vs. Sh.Vishwanath Duggal.

2. Sh.Vishwanath Duggal, respondent No.2 is the landlord of the premises Shop No.CB-70/10, Indra Market, Ring Road, Naraina, Delhi Cantt, Delhi. The said shop was under the tenancy of respondent No.1, Sh.Prem Pal. Respondent No.2 landlord obtained an ex-parte order of eviction against respondent No.1, Sh.Prem Pal and recovered the possession of the said shop.

3. After, pursuant to an ex-parte eviction order, possession of the shop was recovered by respondent No.2 from respondent No.1, he filed an application on 13th November, 1989 for setting aside the ex-parte eviction order passed against him. An application for restoration of the tenanted premises, the possession of which was recovered from him by the respondent no.2 was also filed on 13th November, 1989.

4. After the application for setting aside the ex-parte eviction order passed against respondent No.1 and his application for restoration of possession of the tenanted premises was filed by respondent No.1, with a view to defeat the rights of respondent No.1, the respondent No.2 let out the said shop to petitioner on a monthly rent of Rs.1000/-.

5. The petitioner also alleged that he had paid a premium/pagri (refundable to the petitioner at the time of eviction of the tenanted shop) of Rs.2 lakhs to respondent No.2, however, no receipt was executed.

6. After protracted trial the application of petitioner No.1 for setting aside the ex-parte eviction order and for restoration of the possession of the tenanted premises was allowed by order dated 7th July, 2006 and the possession of the tenanted shop was recovered petitioner and restored to the respondent no.1. The petitioner, therefore, filed an application under Order 21 Rule 99, 100 and 101 read with Section 151 of the Code of Civil Procedure. The petitioner before the Rent Controller had contended that the rent of the shop which was let out by respondent No.2 to the petitioner, after filing the application of respondent No.1 for setting aside the ex-parte eviction proceedings and for restoration of possession of the tenanted premises, was let out at Rs.1000/- per month excluding electricity and other charges which rate of rent was increased to Rs.1900/- per month and he was dispossessed on 4th December, 2004. The contention of the petitioner was that no decree was passed against him nor he is a judgment debtor within the meaning of Section 2(10) and Order 21 Rule 100 and, therefore, he is entitled for re-delivery of the property on

the ground that he is the lawful tenant and the shop was got evicted from respondent No.1 by respondent No.2 pursuant to an eviction order dated 8th May, 1989 passed by Sh.B.L.Garg and for restoration of possession by the respondent no.2 to respondent no.1, the premises can not be recovered from him and given to the respondent no.1.

7. The application of the petitioner was contested contending inter-alia that the petitioner could not acquire better rights than the rights of the respondent No.2. Respondent No.2 had let out the premises to the petitioner with a view to deprive the rights of respondent No.1 who had already filed an application for setting aside the ex-parte decree dated 8th May, 1989 passed against him and for restoration of possession because admittedly the same premises was let out to the petitioner after the applications were filed by the respondent no.1. After the order of eviction against the respondent No.1 was set aside and he was held to be entitled for recovery of possession, the respondent No.2 was liable to restore the possession and consequently even petitioner to whom the premises was let out only to circumvent the order passed in favor of respondent No.1 was liable to restore the possession. The eviction order which was passed against the respondent no.1 was ultimately set aside on 22nd April, 2000.

8. The Rent Controller considered the judgments relied on by the petitioner including 54(1994) Delhi Law Times 258 (SC) regarding the rights of a bonafide purchaser. It was held that if a party to a suit is bound to restore possession under any provision of law, his representatives or legal assigns are equally liable. Consequently, it was held that if respondent No.2 on setting aside the eviction order passed in his favor dated 8th May, 1989 was liable to restore the possession of tenanted premises to respondent No.1, the petitioner being his legal assign or representative was equally liable to restore the possession to the respondent No.1 and consequently respondent No.1 was justified in recovering possession from the petitioner. It was noticed that the petitioner failed to establish that he was inducted bonafide by the respondent No.2.

9. In the appeal filed by the petitioner against dismissal of his application by order dated 7th July, 2006 the Rent Control Tribunal has also considered AIR 1963 Punjab 229, Smt.Kanso Devi Vs.Kishan Chand; AIR 1966 SC 948; AIR 1993 Karnataka 338 and AIR 1977 Delhi 12 and passed an order holding that petitioner was liable to restore the possession of the premises to respondent No.1 and dismissed his appeal

against the order dated 7th July, 2006 of the Rent Controller.

10. The Tribunal relied on Section 52 of the Transfer of Property Act. Considering the evidence and especially regarding the fact that the petitioner was not inducted bonafide and the fact that the tenancy in favor of petitioner was created, after the application for setting aside the ex-parte eviction order dated 8th May, 1989 and for restoration of possession was filed by the respondent no.1. It has been held that the petitioner was not entitled for the protection sought by him and he had been rightly dispossessed pursuant to an order passed against respondent No.2 to restore the possession of the tenanted premises to respondent No.1.

11. The learned counsel for the petitioner has contended that he was not made a party and he has not been given a hearing. After the possession of the premises was restored to respondent No.1 pursuant to order of restoration of possession was passed against respondent No.2, the application filed by the petitioner by objecting the recovery of possession from him, has been considered in detail by the Rent Controller along with his documents filed by him and after detailed investigation came to the conclusion that petitioner was liable to restore the possession

of the tenanted shop to the respondent No.1. The Appellate Court has also considered his pleas and contentions in detail and, therefore, the petitioner cannot say that he was not given a reasonable opportunity so as to deny the principles of natural justice.

12. Perusal of the record also reveals that the petitioner has failed to establish that the tenancy of respondent No.2 was created in his favour bonafide. If the petitioner cannot claim that the tenancy in his favour was bonafide, he cannot resist the order passed against respondent No.2 for restoration of possession to his tenant, respondent No.1 after the possession was taken by respondent No.2 pursuant to an eviction order passed against respondent No.1 ex-parte.

13. There is concurrent finding of facts by the courts. It is also to be noticed that the Tribunal has considered the pleas and evidence in detail and also the judgment of rent controller. The petitioner is not entitled for reconsideration of all the pleas and contentions. An important aspect which cannot be lost sight of is that that the tenancy in favor of respondent no.1 after evicting him, was not created bonafide and was created after the respondent no.1 had already filed his application for setting aside the

ex-parte order against him and for restoration of possession of tenancy premises to him. In view thereof the scrutiny by this Court under Article 227 of the Constitution of India is not to review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based. The Apex Court in Mohd. Yunus v. Mohd. Mustaqim and Ors., AIR 1984 SC 38 had in fact observed that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India as the supervisory jurisdiction conferred on the High Courts is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record much less an error of law. This legal position had again been expounded in Surya Dev Rai v. Ram Chander Rai & Ors., JT 2003 (6) SC 465.

14. In the circumstances, the learned counsel is unable to point out such an error of law distinguishable from a mere mistake of law or error of law relating to jurisdiction or violation of principle of natural justice or that there has been arbitrary or capricious exercise of authority or discretion by the Rent Controller and Tribunal so as to entail interference by this Court. The decision of the Courts below cannot be termed perverse or based on

no material nor there is flagrant error in the procedure adopted by the Tribunal and the Rent Controller which will entail interference by this court under Article 227 of the Constitution of India.

15. In the totality of facts and circumstances there are no grounds to interfere with the orders of Rent Controller and Rent Control Tribunal in exercise of jurisdiction under Article 227 of the Constitution of India and, therefore, the petition is dismissed.

April 27, 2007 **ANIL KUMAR, J.**
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